

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
★ AUG 03 2010 ★

Hachim Mondesir

Plaintiff,

v.

The City of New York, Police Officer  
Leonard J. Clarke (Shield # 27183),  
Sergeant Edmund Small (Tax ID.# 920864)  
Police Officers John Doe 1-4.

Defendants

BROOKLYN OFFICE

CIVIL ACTION NO:

**CV 10-3558**

JURY TRIAL DEMANDED

**JOHNSON. J**

Plaintiff Hachim Mondesir, as and for his Complaint, by his undersigned counsel, alleges as follows:

NATURE OF THE ACTION

**POI LAK. M.J**

1. This is an action at law to redress the deprivation of rights secured to the plaintiff under color of statute, ordinance, regulation, custom, and/or to redress the deprivation of rights, privileges, and immunities secured to the plaintiff by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States, and by Title 42 U.S.C. §1983 [and § 1985], [and arising under the law and statutes of the City and State of New York].

JURISDICTION

2. The jurisdiction of this Court is invoked pursuant to 42 U.S.C. Section 1983, 28 U.S.C. Section 1343, and 28 U.S.C. Section 1331, and under the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution.
3. As the deprivation of rights complained of herein occurred within the Eastern District of New York, venue is proper in this district pursuant to 28 U.S.C. §1391 (b) and (c).

PARTIES

4. Plaintiff is an adult black male, and a resident of the County of Kings, City and State of New York.

5. At all relevant times, defendants Police Officer Leonard J. Clarke (Shield # 27183; Tax I.D # 940013), Sergeant Edmund Small (Tax I.D # 920846), AND Police Officers John Doe 1-4 (hereinafter “defendant officers”) were, upon information and belief, and still are, law enforcement officers employed by the Police Department of the City of New York (hereinafter “NYPD”).
6. At all times herein, the defendant officers were employed as law enforcement officers of the City of New York, and at all times mentioned hereafter, were acting under the color of their official capacity, and their acts were/are performed under color of the statutes and ordinances of the City of New York and/or the State of New York. The defendant officers were/are the servants, agents, and employees of their co-defendant, the City of New York, so that their acts are imputed to the City of New York and the NYPD.
7. At all relevant times, the defendant City of New York was and is a municipal corporation duly organized and existing under the laws of the State of New York, and was/is the employer of the defendant officers through the NYPD, and the actions of the defendant officers complained of herein, were done as part of the custom, practice, usage, regulation and/or direction of the City of New York.
8. Plaintiff sues all defendants in their individual and official capacities.

### **FACTUAL ALLEGATIONS**

#### **COMMON TO ALL CAUSES OF ACTION**

9. On or about October 29, 2007, between the hours of approximately 05:00 p.m and 06:00 p.m., at and within a ‘Sprint’ store located at 1572 Flatbush Avenue, Brooklyn, New York 11210, in the County of Kings, City of New York, the Plaintiff was involved in a dispute with a store employee over merchandise (a Cell Phone) that plaintiff had returned to the ‘Sprint’ Store and received a refund for.
10. Plaintiff had barely stepped out of said store and was walking down the block when one of the ‘Sprint’ store employees, Dominique, came after

plaintiff and, claiming that the plaintiff had returned a defective merchandise (a cell phone), grabbed plaintiff in the neck, assaulted him and dragged him back to said store.

11. The store employee called in the Police and when Police officers Leonard J. Clarke and Sergeant Edmund Small (hereafter 'defendant officers') arrived and heard the claim of the store employee, they believed the store employee and ignored plaintiff's explanation that he returned the merchandise because he found same to be defective and was not the cause of the defect.
12. Against the protest of plaintiff, defendant officers ordered plaintiff to return the reclaimed price of the Cell Phone to the store employee, and even as plaintiff was still explaining that he was entitled to keep the returned price, the defendant officers put a hand cuff on plaintiff.
13. The defendant officers then reached deep into plaintiff's pocket, brought out about \$800.00 plaintiff had on him, took approximately \$400.00 thereof, and ignoring plaintiff's protests, gave the \$400.00 to said store employee as a return of the price of the cell phone.
14. Plaintiff complained to defendant officers about the store employee's prior assault on plaintiff but defendant officers refused to arrest the store employee.
15. Even after seizing plaintiff's money and giving same to the store employee, the defendant officers refused to let go of plaintiff, and without informing plaintiff of any charges against him, they took him to the 70<sup>th</sup> Police Precinct, all in an apparent bid to give their unlawful action a color of legitimacy, as a cover up of their clear violation of plaintiff's civil rights.
16. Upon arrival at said precinct, plaintiff again inquired as to the reason for his arrest but was told that he would find that out upon arrival at "Central Booking".
17. Plaintiff was then photographed, fingerprinted and imprisoned at the Precinct and was denied medical treatment for his aching neck and

bodily pain arising from both the assault by the store employee and the tight fit of the hand cuffs on him.

18. Plaintiff was unlawfully, illegally and improperly strip-searched at the police precinct, despite the fact that the defendant officers did not have any reasonable suspicion that he was concealing any weapons or contraband.
19. Defendant officers falsely imprisoned plaintiff at their precinct up until 10/30/07, when they transferred him to the 'Central Booking' office in Brooklyn New York and falsely charged plaintiff with Assault, Disorderly Conduct, and Menacing; on 02/14/08, the charges were dismissed.
20. The arrest and imprisonment of plaintiff were affected without probable cause by defendant Officer Leonard J. Clarke (Shield #27183; Tax I.D # 940013), who at all time relevant to this action acted with the permission and consent of Sergeant Edmund Small (Tax I.D # 920846).

**FIRST CAUSE OF ACTION: FALSE ARREST**

**UNDER 42 U.S.C § 1983**

21. By this reference, plaintiff incorporates each and every allegation and averment set forth in paragraphs 1 through 20 of this complaint as though fully set forth herein.
22. The arrest of plaintiff was done without just or probable cause.
23. As a result of the aforesaid conduct by defendant officers, the plaintiff was subjected to an illegal, improper and false arrest, and caused to be taken into custody and falsely imprisoned, detained and confined without any probable cause, privilege or consent.
24. As a result of the arrest of plaintiff without just or probable cause, plaintiff's liberty was restricted for an extended period of time, he was put in fear for his safety, caused to suffer humiliation, great mental and physical anguish, embarrassment and scorn among those who knew or saw him, was prevented from attending to his necessary affairs, was

caused to incur legal expenses, and has been otherwise damaged in his character and repute.

25. Consequently, plaintiff has been damaged and hereby demands compensatory and punitive damages in an amount to be proven at trial against each of the defendants, individually and severally.

**SECOND CAUSE OF ACTION: FALSE IMPRISONMENT**

**UNDER 42 U.S.C § 1983**

26. By this reference, plaintiff incorporates each and every allegation and averment set forth in paragraphs 1 through 20 of this complaint as though fully set forth herein.
27. The detention and/or imprisonment of plaintiff resulting from his false arrest was illegal.
28. As a result of the false imprisonment of plaintiff, plaintiff's liberty was restricted for an extended period of time, he was put in fear for his safety, caused to suffer humiliation, great mental and physical anguish, embarrassment and scorn among those who knew or saw him, was prevented from attending to his necessary affairs, was caused to incur legal expenses, and has been otherwise damaged in his character and repute.
29. Consequently, plaintiff has been damaged and hereby demands compensatory and punitive damages in an amount to be proven at trial against each of the defendants, individually and severally.

**THIRD CAUSE OF ACTION: MALICIOUS PROSECUTION**

**UNDER 42 U.S.C § 1983**

30. By this reference, plaintiff incorporates each and every allegation and averment set forth in paragraphs 1 through 20 of this complaint as though fully set forth herein.

31. The commencement and continued prosecution of the criminal judicial proceeding against plaintiff, including the arrest, the imprisonment, and the charges against plaintiff were committed by or at the insistence of the defendant officers without probable cause or legal justification and with malice.
32. The defendant officers were directly involved in the initiation of criminal proceedings against the plaintiff.
33. The defendant officers lacked probable cause to initiate criminal proceedings against the plaintiff.
34. The defendant officers acted with malice in initiating criminal proceedings against the plaintiff.
35. The defendant officers were directly involved in the continuation of criminal proceedings against the plaintiff.
36. That said defendants lacked probable cause in continuing criminal proceedings against the plaintiff.
37. That said defendants acted with malice in continuing criminal proceedings against the plaintiff.
38. That said defendants misrepresented and falsified evidence to the prosecutors in the Kings County District Attorney's office.
39. That said defendants withheld exculpatory evidence from the prosecutors in the Kings County District Attorney's office.
40. That said defendants did not make a complete statement of facts to the prosecutors in the Kings County District Attorney's office.
41. The criminal judicial proceeding initiated against plaintiff was dismissed on February 14, 2008, and terminated in the plaintiff's favor.
42. The arrest, imprisonment and prosecution of the plaintiff were malicious and unlawful because plaintiff had committed no crime and there was no probable cause to believe that plaintiff had committed any crimes.
43. The defendants actions were intentional, unwarranted and in violation of the law. The individual defendants had full knowledge that the charges made before the Court against the plaintiff were false and untrue.

44. As a consequence of the malicious prosecution by the defendants, plaintiff suffered a significant loss of liberty, humiliation, mental anguish, depression, loss of wages from work, and her constitutional rights were violated. Plaintiff hereby demands compensatory damages and punitive damages, in an amount to be determined at trial, against each of the defendants, individually and severally.

**FOURTH CAUSE OF ACTION: UNLAWFUL SEARCH**

**UNDER 42 U.S.C § 1983**

45. By this reference, plaintiff incorporates each and every allegation and averment set forth in paragraphs 1 through 20 of this complaint as though fully set forth herein.
46. Following the plaintiff's false arrest, the defendants strip-searched and/or caused the plaintiff to be strip-searched, without any individualized reasonable suspicion that he was concealing weapons or contraband.
47. As a result of the foregoing, the plaintiff was subjected to illegal and improper strip search.
48. The foregoing unlawful strip search violated the plaintiff's constitutional right to privacy, as guaranteed by the Fourth, Fifth and Fourteenth Amendments to the United States Constitution.
49. As a consequence of said defendant officer's actions, plaintiff suffered humiliation, mental anguish, depression, and his constitutional rights were violated. Plaintiff was treated like a common criminal. Plaintiff hereby demands compensatory and/or punitive damages, in an amount to be determined at trial, against each of the defendants, individually and severally.

**FIFTH CAUSE OF ACTION: FAILURE TO**

**INTERVENE/INTERCEDE**

**UNDER 42 U.S.C § 1983**

50. By this reference, plaintiff incorporates each and every allegation and averment set forth in paragraphs 1 through 20 of this complaint as though fully set forth herein.
51. Each and every individual defendant had an affirmative duty to intervene on the plaintiff's behalf to prevent the violation to his constitutional rights, as more fully set forth above.
52. The individual defendants failed to intervene on the plaintiff's behalf to prevent the violation of his constitutional rights, despite having had a realistic and reasonable opportunity to do so.
53. As a consequence of said defendants' actions, plaintiff suffered loss of liberty, humiliation, mental anguish, depression, loss of wages from work, and his constitutional rights were violated. Plaintiff hereby demands compensatory damages and punitive damages, in an amount to be determined at trial, against each of the defendants, individually and severally.

**SIXTH CAUSE OF ACTION: MUNICIPAL LIABILITY**

**UNDER 42 U.S.C § 1983**

54. By this reference, plaintiff incorporates each and every allegation and averment set forth in paragraphs 1 through 53 of this complaint as though fully set forth herein.
55. The defendants arrested and incarcerated the plaintiff, in the absence of any evidence of criminal wrongdoing, notwithstanding their knowledge that said arrest and incarceration would jeopardize the plaintiff's liberty, well-being, safety and constitutional rights.
56. The acts complained of were carried out by the individual defendants in their capacities as police officers and officials, with all the actual and/or apparent authority attendant thereto.
57. The defendant officers acted under color of law, in their official capacity, and their acts were performed pursuant to the customs, policies, usages,



practices, procedures and rules of the City of New York and its police department.

58. The aforementioned customs, policies, usages, practices, procedures and rules of the City of New York and its police department include, but are not limited to the following unconstitutional practices:
- a. Wrongfully arresting individuals on the pretext that they are/were involved in Disorderly Conduct, Assault and Menacing.
  - b. manufacturing evidence against individuals allegedly involved in said offences;
  - c. unlawfully strip-searching pre-arraignment detainees in the absence of any reasonable suspicion that said individuals were concealing weapons or contraband; and arresting innocent persons in order to meet "productivity" goals (i.e. arrest quotas).
59. The existence of the aforesaid unconstitutional customs and policies may be inferred from repeated occurrences of similar wrongful conduct, as documented in the numerous civil rights actions filed against the City of New York in the state and federal courts.
60. The existence of the aforesaid unconstitutional customs and policies may also be inferred from the admission by Deputy Commissioner Paul J. Browne, as reported by the media on January 20, 2006, that commanders are permitted to set "productivity goals".
61. Furthermore, the existence of the aforesaid unconstitutional customs and policies may also be inferred from the ruling (Docket entry 32) of the Court (Eastern District of New York), in the case(s) of Jose Colon v. City of New York, et al (09-cv-8) and Maximo Colon v. City of New York, et al (09-cv-9), wherein the Court stated, *inter alia*, that "*Informal inquiry by the court and among the judges of this court, as well as knowledge of cases in other federal and state courts, has revealed anecdotal evidence of repeated, widespread falsification by arresting officers of the New York City Police Department*", and that "*there is some evidence of an attitude among officers that is sufficiently widespread to constitute a*

*custom or policy by the city approving the illegal conduct of the kind now charged".*

62. Apart from the foregoing practices and policies, the defendant City of New York also exhibited a deliberate indifference toward the training and supervision of assistant district attorneys in the King's County District Attorney's office, in that said defendant:
- a. Intentionally and/or recklessly failed to properly instruct, train, and/or supervise assistant district attorneys with regard to their obligation to ensure that sufficient evidence is actually presented to a court.
  - b. Intentionally and/or recklessly failed to properly instruct, train, and/or supervise assistant district attorneys with regard to their obligation to ensure that criminal indictments or arraignments against criminal defendants contain allegations for which sufficient evidence was in fact presented to a court;
  - c. Intentionally and/or recklessly failed to properly instruct, train, and/or supervise assistant district attorneys with regard to their obligation to discontinue a criminal prosecution when it becomes apparent that there is in fact no credible basis for said prosecution; and
  - d. Intentionally and/or recklessly failed to properly instruct, train, and/or supervise assistant district attorneys with regard to their obligation to avoid a "win at all costs" approach to trial involving, *inter alia*, the following misconduct: coaching and/or permitting witnesses to give inaccurate, false and/or misleading testimony; and tailoring witness testimony to explain and/or omit inconsistencies with physical evidence.
63. The aforesaid deliberate indifference to the training and supervision of Kings County assistant district attorney's may also be inferred from the events that transpired in the underlying criminal proceeding against the plaintiff prior to its dismissal by the Honorable Danny Chun, as set forth above, including but not limited to ADA Rios' admission that the indictment "*could have been reviewed by a supervisor, or it could have*

*been reviewed by a peer of whoever wrote it, or it may not have been reviewed. There is no way to tell".*

64. The aforementioned customs, policies, usages, practices, procedures and rules of the City of New York, constituted a deliberate indifference to the safety, well-being and constitutional rights of all criminal defendants, including but not limited to the plaintiff; were the proximate cause of, and moving force behind, the constitutional violations suffered by the plaintiff as alleged herein, and deprived plaintiff of the following rights, privileges and immunities secured to him by the Constitution of the United States:

- (a) The right of plaintiff to be secure in his person and effects against unreasonable search and seizure under the Fourth and Fourteenth Amendments to the Constitution of the United States.
- (b) The right of plaintiff not to be deprived of life, liberty, or property without due process of law, and the right to the equal protection of the laws, secured to him by the Fifth and Fourteenth Amendments to the Constitution of the United States.
- (c) The right to be free from unreasonable detention and/or continued detention without probable cause in that plaintiff was detained for more than 24 hours..

65. At all times relevant to this complaint, defendant officers, as law enforcement officers of the City of New York, were acting under the direction and control of defendant City of New York, and were acting pursuant to the official policy, practice, or custom of the City of New York.

66. Acting under color of law and pursuant to official policy, practice, or custom, defendant City of New York, including but not limited to the Kings County District Attorney's office, intentionally, knowingly, negligently and recklessly failed to instruct, supervise, control, and

discipline, on a continuing basis, its officers, servants and employees in their duties, to refrain from unlawfully and maliciously arresting, imprisoning and maliciously prosecuting persons/citizens.

67. Acting under color of law and pursuant to official policy, practice, or custom, defendant City of New York, including but not limited to the Kings County District Attorney's office, intentionally, knowingly, negligently and recklessly failed to instruct, train, and supervise its officers, servants and employees in their duties, on a continuing basis, in the correct procedure for making an arrest; preparing criminal complaints; and subsequently preparing and verifying the accusations contained within indictments, in order to ensure that the rights of persons/citizens are not violated and are adequately protected.
68. Defendant City of New York, including but not limited to the Kings County District Attorney's office, had knowledge, or, had they diligently exercised their duties to instruct, supervise, control, and discipline their servants, agents and employees on a continuing basis, should have had knowledge that the wrongs which were done, as heretofore alleged, were about to be committed.
69. Defendant City of New York, including but not limited to the Kings County District Attorney's office, had power to prevent or aid in preventing the commission of said wrongs, could have done so by reasonable diligence, and intentionally, knowingly, negligently or recklessly failed or refused to do so.
70. Defendant City of New York, including but not limited to the Kings County District Attorney's office, directly or indirectly, under color of law, approved or ratified the unlawful, deliberate, malicious, reckless, and wanton conduct of its servants agents, and employees, including but not limited to the defendant officers, as heretofore described.
71. As a direct and proximate result of the acts of the defendants as set forth herein, plaintiff suffered physical and/or mental injury, medical expenses, lost wages, and severe mental anguish in connection with the

deprivation of his constitutional rights guaranteed by the Fourth and Fourteenth Amendments to the Constitution of the United States and protected by 42 U.S.C. Section 1983.

72. The acts of the defendants as set forth above were wanton, malicious, and oppressive, thus entitling plaintiff to an award of punitive and compensatory damages against each of them, individually and severally.

WHEREFORE, plaintiff respectfully prays judgment as follows:

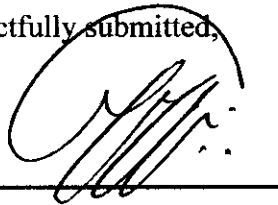
1. compensatory damages against all defendants in an amount to be proven at trial;
2. exemplary and punitive damages against all defendants in an amount to be proven at trial;
3. costs of suit herein, including plaintiff's reasonable attorney's fees; and;
4. such other and further relief as the court deems proper.

**DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 38 (b) of the Federal Rules of Civil Procedure, plaintiff demands a trial by jury.

Dated: Brooklyn, New York  
July 27, 2010.

Respectfully submitted,



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**Defendants**

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